

IN THE FOURTH DISTRICT COURT OF THE STATE OF UTAH IN AND FOR  
UTAH COUNTY.

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PROVO RESERVOIR COMPANY,  
a corporation,

Plaintiff, :

#2888

-vs-

PROVO CITY, et. al.,

Defendants :

:SEPARATE ANSWER OF  
EDWIN D. HATCH AND  
:VERMONT HATCH, SUB-  
STITUTED DEFENDANTS

Come now Edwin D. Hatch and Vermont Hatch, substituted defendants herein and answering the complaint of plaintiff, admit, deny and allege as follows:-

1. These defendants admit all of the allegations of said complaint set forth in paragraph 1 to 27 inclusive.

2. These defendants admit the allegations set forth in paragraphs 31-38 and 39 of plaintiff's complaint.

3. Answering paragraphs 28, 29, 30, 32 and 33 of plaintiff's complaint these defendants allege that they have no knowledge or information sufficient to form a belief as to the matters alleged in said paragraphs and therefore deny the allegations set forth in paragraphs 28, 29, 30, 32 and 33 .

4. These defendants admit that the plaintiff claims the right as set forth in paragraph 34 of plaintiff's complaint, but allege that these defendants have no knowledge or information sufficient to form a belief as to the extent of plaintiff's rights as alleged in said paragraph 34.

5. Answering paragraph 35 these defendants deny for themselves alone the allegations thereof, except that these defendants claim and allege that the plaintiff's rights to the use of the waters flowing in the Provo river and its tributaries at and above the points of diversion by the defendants, are all subject to prior rights of these defendants as hereinafter in this counterclaim set forth.

6. Answering paragraph 36 of plaintiff's complaint, these defendants deny that they or their predecessors in interest have used any water or waters from the Provo river or its tributaries in a wasteful manner and deny that they have diverted any water whatsoever in excess of the amount actually necessary to properly and beneficially irrigate the land to which the waters diverted by them are appurtenant, and these defendants deny that they have in any manner interfered with, prevented or hindered the plaintiff or any of its water users from receiving and using any water to which the plaintiff or any of its water users or assigns are entitled, and these defendants allege that they have no knowledge or information sufficient to form a belief as to whether other defendants in this action use water in a wasteful manner or as to whether other defendants interfere with, prevent and hinder plaintiff and its water users from receiving and using water to which it is entitled.

7. These defendants admit that the decrees of the Fourth Judicial District Court of the State of Utah, were entered as alleged in paragraph 37 of plaintiff's complaint and allege that these defendants have no knowledge or information sufficient to form a belief as to the other allegations contained in said paragraph 37.

8. These defendants deny each and every allegation of said complaint not hereinbefore specifically admitted or denied.

FURTHER ANSWERING said complaint, and by way of counterclaim, these defendants allege:-

1. That Abram Hatch died at Heber City, Wasatch County State of Utah, on December 2, 1911, that thereafter Ruth Hatch and Abram C. Hatch were duly and regularly appointed as executors of the last will and estate of Abram Hatch, deceased, and that during their administration of said estate this action was commenced and said executors were made parties defendant; that on or about the 9th day of November, 1915, while the above-entitled action was pending, a decree of distribution was entered in the matter of the estate of Abram Hatch, deceased, in the Fourth District Court of the State of Utah, sitting in and for Wasatch County; that by virtue of said decree the defendants Edwin D. Hatch and Vermont Hatch became the owners of and now are the owners of all of that real estate described in paragraph 2 of the counterclaim of Ruth Hatch and Abram C. Hatch, executors, heretofore filed herein.

2. That the said Edwin D. Hatch and Vermont Hatch, as hereinsbove in paragraph 1 set forth, are now the owners of, as successors in interest of Abram Hatch, deceased, the forty-four acres of cultivated land and fifty acres of pasture land situated in the west one-half of Section 7, Township 3 south, Range 5 east of the Salt Lake Meridian, and of twelve acres of cultivated lands and forty-eight acres of pasture lands situated

in the south one-half of the Southwest Quarter of Section 6, Township 3 south, Range 5 east, Salt Lake Meridian, all in Wasatch County, State of Utah, all of which lands now are and for more than thirty years last past have been irrigated with water diverted from Provo river.

3. That the twelve acres of cultivated lands and eight acres of the forty-eight acres of pasture lands situated in the south one-half of the southwest quarter of section 6, Township 3 south, Range 5 east, Salt Lake Meridian, now are and have been for thirty years, irrigated by reason of a primary or low water right acquired by appropriation and use about the year A.D. 1884, and that the forty acres of pasture land situated in the said South one-half of the southwest quarter of section 6, Township 3 south of Range 5 east, Salt Lake Meridian, now is and for thirty years has been irrigated during the high water season, by the high or flood waters of the said Provo river.

4. That the forty-four acres of cultivated land situated in the west one-half of Section 7, Township 3 south, Range 5 east, Salt Lake Meridian, now is and for thirty years has been irrigated during the low water season, by a primary low water right from the said Provo river, acquired by appropriation and use about the year A.D. 1884, and that the fifty acres of pasture land situated in the said west one-half of section 7, Township 3 south, Range 5 east, Salt Lake Meridian, now is and for thirty years has been irrigated by the high or flood waters diverted from the Provo river, that ten acres of said fifty acres is irrigated by turning the said high or flood waters on said lands, and the other forty acres of pasture land is irrigated by being covered with the flood waters of said Provo river during the high water season.

5. That by the decree of the Fourth Judicial District Court in and for Wasatch County, State of Utah, entered in the case of Wasatch Irrigation Company et. al. vs. Edward Fulton et. al., on the 6th day of May, A.D. 1899, which was prior to the death of Abram Hatch, deceased, the said Abram Hatch, deceased, the predecessor in interest of these defendants, there was decreed five-sevenths second feet of the primary or low water from said Provo river as appurtenant to part of the cultivated lands hereinabove in paragraph 1 of this counterclaim set forth, and that one Samuel Lee was decreed one-seventh second feet of primary or low water of the said Provo river, and two-sevenths second feet of "Class 6" water rights as classified by said decree as appurtenant to other of said lands hereinabove in paragraph 1 of this counterclaim described, and that subsequent thereto the said Abram Hatch acquired the title by purchase of all of the lands and water rights of the said Samuel Lee.

6. That the duty of all the water decreed in the aforesaid decree in the case of Wasatch Irrigation Company et. al. vs Edward Fulton, et. al. was one second foot to seventy acres of land, and that by virtue of said decree and the succession of interest of these defendants, Edwin D. Hatch and Vermont Hatch, they are now the owners of sixty acres of primary or low water right and twenty acres of sixth class water right, all appurtenant to the lands situated in Sections 6 and 7 of Township 3 south, Range 5 east, Salt Lake Meridian, and that by virtue of the appropriation and use for a period of thirty years, by the predecessor in interest of these defendants and their having acquired all of his rights they are the owners of and entitled to the use of sufficient quantities of the high waters of Provo river to irrigate ninety-eight acres of the pasture lands situated in said Sections 6 and 7 Township 3 south, Range

Five east, Salt Lake Meridian.

7. That owing to the nature of the soil, the condition and situation of the said pasture lands, it will require water at the rate of one second foot of water to forty acres to properly irrigate said lands.

8. That the right to the use of the water of said river decreed to the predecessors of these defendants, as hereinabove set forth, and the high or flood water of said river heretofore used upon the said lands, has never been used continuously upon said lands, but has been applied as the crops growing thereon required irrigation, at intervals of approximately every two weeks, and when so used has been used in large quantities so that the same might be economically and beneficially applied to the said lands for their proper irrigation, and that owing to the nature and kind of soil of said lands it is impracticable and impossible to properly and beneficially irrigate the same with a stream less than four or five second feet, as a smaller stream percolates through the soil and evaporates and can not be distributed or flooded over the said land so as to properly irrigate the same.

WHEREFORE, these defendants pray judgment:-

1. That these defendants be decreed to be the owners of two-sevenths second feet of primary or low water right in said Provo river as and for water right to the said twelve acres of cultivated lands and eight acres of pasture lands situated in the South one-half of the southwest quarter of Section 6, in Township 3 south, Range 5 east, Salt Lake Meridian.



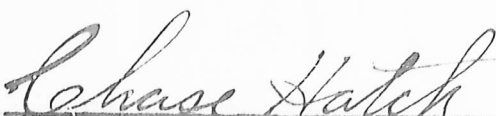
2. That they be decreed to be the owners of forty-four-seventieths second feet of primary or low water right of said Provo river as and for the water right to the forty-four acres cultivated land situated in the west one-half of Section 7, Township 3 south, Range 5 East, Salt Lake Meridian.

3. That in addition to the primary rights above prayed for, they be decreed one second foot of the high waters of said Provo river as and for the water right to the forty acres of pasture land situated in the south one-half of the southwest quarter of Section 6, Township 3 south, Range 5 east, Salt Lake Meridian.

4. That they be decreed to be the owners of one and one-fourth second feet of the high waters of Provo river as and for a water right to the fifty acres of pasture land situated in the west one-half of Section 7, Township 3 south, Range five east, Salt Lake Meridian.

5. That it be decreed that any water commissioner who may be appointed by the court to distribute the waters of Provo river to the parties entitled thereto, shall be directed to distribute to these defendants larger quantities of water at regular intervals, the quantity to be proportionate to the rights of these defendants to the use of waters of said river, so that their lands may be properly and economically irrigated.

6. These defendants pray for such other and further relief as may be just and equitable; for their costs herein expended.

  
Attorney for said substituted  
defendants.

State of Utah, :

County of Wasatch:ss

Edwin D. Hatch, being first duly sworn, deposes and says, that he is one of the defendants named in the foregoing answer and counterclaim, and that he has read the same and knows the contents thereof; that the same is true of his own knowledge, except as to the matters and things therein stated on information and belief, and as to those matters he believes it to be true.

*Edwin D. Hatch.*

Subscribed and sworn to before me

this *18* day of January, 1916.



My Commission Expires:

*Chase Hatch*  
Notary Public

*Due and legal service of the above answer is hereby accepted this 5<sup>th</sup> day of June 1916.*

*Just Evans,*  
*attys for Plff.*



2588

IN DIST. COURT  
UTAH CO., UTAH,

\* FILED \*

JUN 5 1916

E. J. Ragsdale, Clerk.

W. H. Smith, Deputy.